

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN PORTENIER

Claimant

VS.

CONAGRA CORN PROCESSING

Respondent

Self Insured

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Docket No. 242,078

ORDER

Respondent appealed the April 30, 1999, preliminary hearing Order for Compensation entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Following an April 28, 1999, preliminary hearing, the Administrative Law Judge, in a preliminary hearing Order dated April 30, 1999, granted claimant's request for payment of medical expenses, appointment of an authorized treating physician, and ordered respondent to pay claimant temporary total disability benefits. Respondent appealed and contends claimant failed to prove he suffered an accidental injury that arose out of and in the course of his employment with respondent. Further, the respondent argues that the Administrative Law Judge erred in appointing A. Michael Borkon, M.D., as the authorized treating physician, ordering respondent to pay medical expenses, and temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board has jurisdiction to review the Administrative Law Judge's preliminary hearing finding of whether claimant suffered an accidental injury that arose out and the course employment with the respondent. But the issues raised by the respondent that deal with medical treatment, payment of medical expenses, and payment of temporary total disability benefits are not issues subject to review by the Appeals Board at this stage of the proceedings. See K.S.A. 1998 Supp. 44-534a.

The Appeals Board finds, for preliminary hearing purposes, that claimant has proven it is more likely than not that his heavy lifting at work produced the development of the spontaneous pneumothorax. This finding is supported by the medical opinions contained in the preliminary hearing record of claimant's treating physicians, Thomas M. Holian, M.D., and A. Michael Borkon, M.D. The preliminary hearing record contains reports from both of these physicians that relate the development of the spontaneous pneumothorax to claimant's heavy lifting at work.

The Appeals Board acknowledges that the preliminary hearing record contains medical notes from Lauren A. Welch, M.D., one of claimant's treating physicians at the Atchison Hospital, who does not relate claimant's spontaneous pneumothorax to his work. Additionally, the preliminary hearing record contains the medical opinion of Mary A. Wampler, M.D., who did not examine the claimant but reviewed claimant's treatment records and also does not relate the pneumothorax to claimant's work activities. The Appeals Board, however, concludes the opinions of Dr. Holian, a pulmonary specialist, and Dr. Borkon, a thoracic and cardiovascular surgeon, are more persuasive and should be given more weight than the opinions of Dr. Welch or Dr. Wampler.

WHEREFORE, the Appeals Board finds that the April 30, 1999, preliminary hearing Order for Compensation entered by Administrative Law Judge Bryce D. Benedict should be, and is hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Jeffrey D. Slattery, Kansas City, MO
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director